



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Blanton Contractors, Inc.—Reconsideration

File: B-260562.2

Date: November 16, 1995

DECISION

Blanton Contractors, Inc. requests that we reconsider our decision in Blanton Contractors, Inc., B-260562, June 27, 1995, 95-1 CPD ¶ 292, in which we denied its protest of the Army's rejection of its proposal because of a defective contract guarantee under request for proposals (RFP) No. DACW62-94-R-0034. The Army found that the contract guarantee, submitted in the form of an irrevocable letter of credit, was unacceptable because it restricted the government's right to draw upon the letter.

We deny the request.

In an attempt to satisfy the RFP requirement that it submit a contract guarantee with its best and final offer (BAFO), Blanton submitted an "Irrevocable Letter of Credit" issued by a bank, which provided that it was "subject to the Uniform Customs and Practice for Documentary Credits [UCP] (1983 revision), International Chamber of Commerce Publication No. 400." The Army found the letter of credit deficient because the UCP restricted the government's right to draw upon the letter.

Blanton argued in its protest, among other things, that the Army's decision to reject its letter of credit was improper because an agency representative had advised the firm that a letter of credit would be acceptable; the agency had previously accepted a letter from the same bank with the same restrictive language submitted by the awardee under a different solicitation; and once the Army had determined that the letter of credit included in its best and final offer (BAFO) was unacceptable, the Army failed to give Blanton an opportunity through further discussions to correct the restrictive language in the letter of credit.

In our decision, we concluded that Blanton's letter of credit was properly found unacceptable because Article 19 of the UCP states that banks assume no liability or responsibility under a letter of credit which expires during an interruption of bank business due to acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, and this limitation could serve to cause the government to relinquish its right to enforce payment under the letter. We also found without merit Blanton's contention that the Army should have accepted its

defective guarantee because it had previously done so, because an agency's past practice is not a basis for questioning otherwise correct procurement practices. Niles Janitor Serv. & Supply, Inc., B-246575.3, Mar. 3, 1992, 92-1 CPD ¶ 256; General Elec. Co., B-228191, Dec. 14, 1987, 87-2 CPD ¶ 585. As to the protester's allegation that the Army should have reopened discussions to allow Blanton to correct its letter of credit, we explained that the agency has no obligation to reopen discussions so that an offeror may remedy defects first introduced in a BAFO.¹ Brooks Towers, Inc., B-255944.2, Apr. 28, 1994, 94-1 CPD ¶ 289.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1995). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. Pilkington Aerospace, Inc.-Recon., B-259173.2, May 15, 1995, 95-1 CPD ¶ 242.

Blanton has not met the standard for reconsideration of our decision here. Blanton argues that the agency treated it unfairly for the same reasons addressed in our prior decision. Specifically, the protester argues that it submitted a letter of credit relying on the agency's representation that a letter of credit would be acceptable, that the agency had accepted the same letter from the awardee under an earlier solicitation, and that the agency should have given it an opportunity to correct the restrictive language in its letter of credit. Blanton also would have us give effect to a letter from the bank, stating that it used standard language and that the letter was not intended to restrict the government's ability to draw upon the letter of credit if required.

These arguments are largely mere reiterations of arguments raised during the original protest and disagreement with our conclusions regarding those arguments; as such, they do not provide a basis for reconsideration. Dictaphone Corp.-Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. In any case, since rejection of Blanton's letter of credit was reasonably based on application of the correct legal standard, there is no basis for finding bad faith on the agency's part, or unfair treatment of the protester. As to the bank's statement after the fact that it did not intend the letter of credit to be restrictive, this is simply inconsistent with the language

¹Blanton had submitted with its initial proposal a bid bond executed by an individual surety with no supporting documentation. In discussions, Blanton was informed that the bid bond as submitted was unacceptable. Before submitting its BAFO, Blanton submitted a re-executed bid bond which was also found unsatisfactory. Blanton then submitted the irrevocable letter of credit at issue here with its BAFO.

contained therein and, as we noted, there is no requirement that the agency reopen discussions to permit correction of the defect under the circumstances here.

Brooks Towers, Inc., supra.

The request for reconsideration is denied.

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